

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

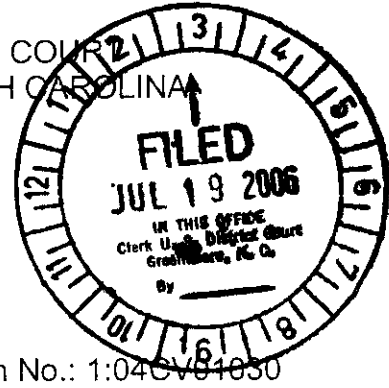
DAVID FREEDMAN, Guardian Ad
Litem FOR J.A.C., a minor, and
BRENDA B. COBBLER,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.



Civil Action No.: 1:04-cv-01030

**MODIFIED CONSENT JUDGMENT APPROVING COMPROMISE SETTLEMENT
OF MINOR'S FEDERAL TORT CLAIM ACTION**

THIS CAUSE COMING ON FOR HEARING on the 30th day of May, 2006 upon the Defendant's Motion For Approval of Compromise Settlement For Minor's Federal Tort Claim Action before the Honorable P. Trevor Sharp, Magistrate Judge Presiding; and the defendant, the United States of America, by and through counsel Anna Mills Wagoner, United States Attorney for the Middle District of North Carolina and Cheryl T. Sloan, Assistant United States Attorney for the Middle District of North Carolina, appearing; and the plaintiffs, minor Plaintiff, J.A.C., his Guardian Ad Litem, David Freedman, and his mother, Plaintiff Brenda B. Cobbler, being present and represented by attorney David D. Daggett of Lewis & Daggett, P.A, appearing; and

IT APPEARING TO THE COURT that the parties have reached a compromised settlement resolving all matters and things in controversy as alleged in the Complaint filed in this minor's federal tort claim case; and that the parties have waived the right to a Bench Trial, having agreed that the Court might hear this matter pursuant to LR17.1; and that this matter is now before the Court for adjudication and approval of this compromise settlement; and

THE COURT, having conducted a hearing on the matter and having heard the testimony offered and reviewed the evidence presented, hereby makes the following Findings of Fact:

FINDINGS OF FACT

1. This is an action arising under the Federal Tort Claims Act, 28 U.S.C. Sec. 2671 et seq., and this Court is vested with jurisdiction pursuant to Section 1346(b), Title 28 of the United States Code, (28 U.S.C. Sec. 1346(b)).

2. Plaintiff J.A.C. is a minor, born November 29, 1988, who is presently seventeen (17) years old and whose interests are properly represented by David Freedman, Guardian Ad Litem, having been duly and regularly appointed as such by

the Clerk of the United States District Court in this action.

3. On September 7, 2001, J.A.C. sustained personal injuries when a United States Postal Service employee operated a United States Postal Service vehicle in reverse and drove said vehicle over the bicycle being operated by the minor plaintiff. The minor plaintiff suffered a broken collarbone, two broken ribs, a laceration of his liver, lacerations to his left ear and scalp requiring stitches, and a broken right arm.

4. The minor plaintiff required certain medical treatment and care as a result of the personal injuries he sustained in this accident, and Plaintiff Brenda B. Cobbler, as the natural parent and legal guardian of the minor plaintiff, is legally responsible for certain medical expenses incurred on behalf of the minor plaintiff, in the amount of \$38,054.72.

5. The United States, David Freedman, Guardian Ad Litem for the minor plaintiff, J.A.C., and Gary and Brenda Cobbler, parents of the minor plaintiff, entered into a Stipulation for Compromise Settlement and Release of Federal Tort Claims Act Claims, a copy of which is attached hereto as Exhibit A and incorporated herein by reference.

6. The defendant, the United States of America, has agreed to pay, and the minor plaintiff, by and through his Guardian Ad Litem, and the minor plaintiff's parents have agreed to accept, the total sum of ONE HUNDRED FIFTY THREE THOUSAND DOLLARS (\$153,000.00) in full, final and complete settlement and satisfaction of all claims against the defendant, the United States of America, that have arisen, or could have arisen, out of the accident referred to in the Complaint in this matter, including, but not limited to, settlement of the minor plaintiff's claims for pain and suffering and permanent injury, the claims of the minor plaintiff's parents for medical expenses and lost wages, and the property damage claim as alleged in the Complaint filed herein. The parties have further agreed that each will bear their own costs, fees, and expenses and that any attorneys fees owed by the plaintiffs will be paid out of the settlement amount and not in addition thereto.

7. There is an outstanding balance owed to Wake Forest University Health Sciences for certain medical treatment and care rendered to the minor plaintiff for injuries sustained in this accident in the amount of \$4,380.00. Upon payment of said amount, no outstanding balances shall remain with any medical providers for treatment rendered in association with the matters alleged in the Complaint.

8. There are no other outstanding claims or liens, other than those stated herein, related and existing in connection with the matters alleged in the Complaint.

9. The minor plaintiff has experienced a satisfactory recovery from the injuries he sustained in the accident referred to in the Complaint, and David Freedman, Guardian Ad Litem for the minor plaintiff, J.A.C., believes that the proposed compromise settlement is fair and reasonable, and is in the best interests of the said minor plaintiff.

10. The minor plaintiff, J.A.C., by and through his Guardian Ad Litem, David Freeman, required the legal services and counsel of Lewis & Daggett, P.A. in reaching the proposed compromise settlement, and Lewis & Daggett, P.A. provided legal services that were fair and reasonably necessary for the benefit of the minor plaintiff.

11. Lewis & Daggett, P.A., in the prosecution of this case and in reaching the proposed compromise settlement, incurred costs in the amount \$795.42 that were fair and reasonably necessary for the benefit of the minor plaintiff.

12. The minor plaintiff, J.A.C., required the services of the Guardian Ad Litem, David Freedman, in connection with the maintenance of this suit and the negotiations of the settlement embraced by this judgment and the services rendered by David Freedman as Guardian Ad Litem for minor plaintiff, J.A.C., were fair and reasonably necessary for the benefit of the minor plaintiff.

NOW, THEREFORE, THE COURT, having made the foregoing Findings of Fact, hereby concludes as a matter of law:

CONCLUSIONS OF LAW

1. David Freedman, Guardian Ad Litem for the minor plaintiff, J.A.C., and Gary and Brenda Cobbler, parents of the minor plaintiff, fully and freely consented to accept the sum of ONE HUNDRED FIFTY THREE THOUSAND DOLLARS (\$153,000.00) as a full and complete settlement of all claims, and the Defendant, through counsel, has consented to pay said amount by way of compromise.

2. The Stipulation for Compromise Settlement Agreement and Release of Federal Tort Claims Act Claims entered into by the parties resolves all matters and things in controversy in the above referenced minor's federal tort claim action, including the minor plaintiff's claims for pain and suffering and permanent injury, the claims of the minor plaintiff's parents for medical expenses and lost wages, and the property damage claim as alleged in the Complaint filed herein, and should be made an order of this Court.

3. The Stipulation for Compromise Settlement Agreement and Release of Federal Tort Claims Act Claims entered into by the parties is fair, reasonable and in the best interest of the minor plaintiff and should be approved without any modification thereto and made an order of this Court.

4. The medical expenses incurred on behalf of the minor plaintiff were reasonable and necessary and should be paid directly out of the total settlement proceeds.

5. Wake Forest University Health Sciences is entitled to payment for certain medical treatment and care rendered to the minor plaintiff for injuries sustained in this accident in the amount of \$4,380.00.

6. Lewis & Daggett, P.A. is entitled to an award of an attorney's fee in an

amount not exceeding twenty-five (25%) percent of the amount of the compromise settlement for the services rendered and should be paid directly out of the total settlement proceeds.

7. Lewis & Daggett, P.A. is also entitled to reimbursement of the \$795.42 in costs that have been incurred in behalf of the minor plaintiff and should be paid directly out of the total settlement proceeds.

8. David Freedman is entitled to an award of \$1,000.00 for Guardian Ad Litem services rendered to the minor plaintiff and should be paid directly out of the total settlement proceeds.

9. It is in the best interests of the minor plaintiff that the balance of the settlement proceeds remaining, after all disbursements as ordered herein have been made, be used to purchase and be invested in a structured annuity fund providing for deferred payments to be made for the benefit of the minor plaintiff

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, by and with the consent of the parties, as follows:

1. That upon the entry of this Judgment, the defendant, the United States of America, shall deliver a check to the Clerk of the United States District Court in the amount of \$153,000.00 to be disbursed by the Clerk as so ordered herein for the benefit of the Minor Plaintiff.

2. Payment of the \$153,000.00, as set forth in this order, shall constitute full, final and complete settlement and satisfaction of any and all liability of the Defendant by reason of the matters and things alleged in the Complaint and for any and all injuries, damages, losses or expenses of every kind which have occurred or may in the future result from the accident alleged in the Complaint.

3. That upon payment of the above-referenced amount into the Clerk of Court, the Clerk shall disburse the proceeds as follows:

- A. \$4,380.00 shall be paid directly to Wake Forest University Physicians for payment of outstanding medical expenses associated with the medical treatment of the minor plaintiff, J.A.C.;
- B. \$31,395.42 shall be paid to Lewis & Daggett, P.A. for attorney fees and reimbursement of costs; and
- C. \$1,000.00 shall be paid to David Freedman for Guardian Ad Litem services.

4. The balance of the settlement proceeds having a present net value of \$116,224.58 shall be used, as the Court finds is in the best interests of the minor plaintiff, to purchase and be invested for and on behalf of the minor plaintiff in a structured annuity fund providing for deferred payments to be made for the benefit of

the minor plaintiff; and said amount shall be paid by the Clerk directly to Aviva Assignment Corporation for the purchase of the annuity as set forth in the structured annuity settlement proposal attached hereto as Exhibit B and incorporated herein by reference. The Court and the parties acknowledge that the costs and payout outlined in the attached structure proposal are subject to a minor variance in the final numbers based upon the date of the funding of the annuity. The parties are therefore ordered to execute all collateral documents necessary, and not inconsistent with this order, to effect said structured annuity settlement; and are further ordered that the payment to fund the structured annuity settlement shall be made as soon as possible, to minimize the costs to the minor plaintiff for said purchase.


5. That upon payment of the above referenced amount into the Clerk of Court, the Clerk shall note on the judgment docket that the Judgment has been satisfied and paid in full.

6. That upon the entry of this Judgment this action is hereby dismissed with prejudice as to all claims contained in the Complaint or that could have been contained in the Complaint and with respect to both plaintiffs and the defendant.


SIGNED, this the 18th day of July, 2006.


Honorable P. Trevor Sharp
United States Magistrate Judge

WE CONSENT:


David Freedman, Guardian Ad Litem
for J.A.C., The Minor in this Action

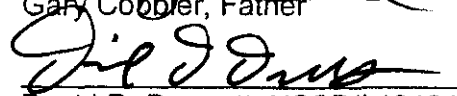
Dated: 7-13-06


Brenda B. Cobbler, Mother

Dated: 7-13-06

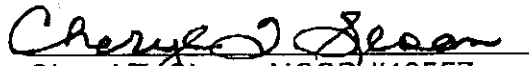

Gary Cobbler, Father

Dated: 7-13-06


David D. Daggett, NCSB# 13181
Attorney for the Plaintiffs

Dated: 7-13-06

ANNA MILLS WAGONER
United States Attorney


Cheryl T. Sloan, NCSB #12557
Assistant United States Attorney
Middle District of North Carolina
Attorney for the Defendant

Dated: July 14, 2006